



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-ES-2011-N182]

[50120-1112-0000-F2]

Draft Environmental Assessment, Incidental Take Plan, and Application for an Incidental Take Permit; Maine Department of Inland Fisheries and Wildlife's Statewide Furbearer Trapping Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; announcement of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Maine Department of Inland Fisheries and Wildlife (MDIFW) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing a 15-year permit to the applicant that would authorize take of the federally threatened Canada lynx incidental to otherwise lawful activities associated with

MDIFW's Statewide furbearer trapping program. Pursuant to the ESA and the National Environmental Policy Act, we announce the availability of MDIFW's incidental take permit application and draft incidental take plan (ITP), as well as the Service's draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: *Comment Period:* To ensure consideration, we must receive your written comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Meetings: We will hold three public information sessions to educate the public about MDIFW's proposal, the Service's permitting process, and the National Environmental Policy Act (NEPA) process. Each session will be from 5 to 9 p.m. and have information tables, presentations by the agencies, and opportunities for discussion and written comments. These meetings are not formal public hearings. Formal public comments will need to be submitted in written form.

The dates and locations of the meetings will be:

December 13: University of Maine at Presque Isle, 181 Maine Street, Presque Isle, 04769 (Grand Ballroom-Allagash and Aroostook rooms) (207-768-9502);

December 14 at Black Bear Inn, 4 Godfrey Drive, Orono, 04473 (207-866-7120);

December 15: University of Southern Maine in Gorham, 37 College Avenue, Gorham, 04038 (Bailey Hall) (207-780-5961).

Information about these meetings will also be posted on the Service's Maine Field Office's (MEFO's) website at <http://www.fws.gov/mainefieldoffice/index.html> or is available by calling (207) 866-3344.

ADDRESSES: Send comments by U.S. mail to Attn: Lynx HCP, Laury Zicari, Field Supervisor, U.S. Fish and Wildlife Service, Maine Field Office, 17 Godfrey Drive, Suite #2, Orono, ME 04473, or via email to hcpmainetrapping@fws.gov.

SUPPLEMENTARY INFORMATION: We received an application from the Maine Department of Inland Fisheries and Wildlife (MDIFW) for an incidental take permit to take the federally threatened Canada lynx (*Lynx canadensis*) in conjunction with Maine's furbearer trapping program. A conservation program to minimize and mitigate for the incidental take would be implemented by MDIFW as described in their draft incidental take plan (ITP).

We prepared a draft environmental assessment (EA) to comply with NEPA (43 U.S.C. 4321 et seq.). The draft EA describes the proposed action and possible alternatives, and analyzes the effects of the alternatives on the human environment. We will evaluate whether the proposed action (Maine's draft ITP and associated avoidance, minimization, and mitigation measures) and other alternatives in the draft EA are adequate to support a finding of no significant impact (FONSI) under NEPA, and we will also determine whether the draft ITP meets the issuance criteria under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et seq.). We are not identifying a preferred alternative, nor

making a FONSI determination at this time. We are requesting comments on MDIFW's draft ITP and our preliminary analyses in the draft EA. Under **Summary of Areas to Focus on in Public Review of MDIFW's Draft Incidental Take Plan**, we have highlighted areas where public input would be particularly valuable.

Availability of Documents

The draft ITP and draft EA are available on the MEFO website at: <http://www.fws.gov/mainefieldoffice/index.html>. Alternatively, copies of the draft ITP and draft EA will be available for public review during regular business hours at MEFO (see ADDRESSES). Those who do not have access to the website or cannot visit our office can request copies by telephone at (207) 866-3344, or by letter to MEFO/Attn: Lynx HCP (see ADDRESSES). Those with computer access will be provided with a compact disk or paper copies.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental

to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations (50 CFR 17.22 and 17.32).

If an incidental take permit is granted to the MDIFW, the State and licensed trappers conducting otherwise legal trapping activities Statewide would be authorized to incidentally take Canada lynx according to limitations prescribed in the draft ITP, along with any additional conditions the Service determines are necessary and appropriate for issuance of an incidental take permit. MDIFW seeks an incidental take permit for a potential of 195 lynx for 15 years from permit issuance. Take, as defined by the ESA, could occur in the following ways: Harassing, harming, trapping, capturing, collecting, wounding, or killing. Not all take during the 15 years would cause mortality. Of the lynx requested to be taken, MDIFW anticipates that all would be trapped, captured, or collected; up to 187 would be harmed or harassed and released with minor injury; up to 3 could have severe injuries requiring rehabilitation; and up to 5 could be killed (3 adults and 2 kittens indirectly killed because their mother was killed in a trap).

The MDIFW draft ITP proposes various measures to minimize and mitigate the effects of take of Canada lynx. This includes the retention or adoption of trapping rules and regulations, maintaining a lynx reporting phone hotline, developing a protocol for evaluating injured lynx, educating trappers, and improving traps. In addition, MDIFW proposes to compensate for five lynx mortalities by creating or managing 5,000 acres of lynx habitat on areas managed by Maine Bureau of Parks and Lands.

MDIFW's proposed action consists of the continuation of the Statewide trapping program and implementation of the draft ITP. We have determined that MDIFW's application facially satisfies the statutory and regulatory permit application submission criteria (16 U.S.C. 10(a)(2)(A) and 50 CFR 17.32(b)(1)(iii)). We seek your input on the content of the application as we assess it relative to the incidental take permit issuance criteria (16 U.S.C. 10(a)(2)(B) and 50 CFR 17.32(b)(2)).

Summary of Areas to Focus on in Public Review of MDIFW's Draft Incidental Take Plan

The MDIFW's obligation is to minimize and mitigate impacts to the maximum extent practicable. The determination of projected take in the draft ITP was based in part on past incidences of reported take of lynx; however, there is evidence that not all lynx trapped are reported. To analyze the full extent of impacts of the proposed action on lynx, and to ensure that the mitigation is commensurate with the level of impacts, an accurate assessment of all lynx taken in traps is required. The Service requests any information on the extent of trapping of lynx that is not reported.

The Service further requests information on the use and practicability of current State trapping regulations and their effectiveness in avoiding trapping of lynx. The Service notes that since submission of the draft ITP, MDIFW has incorporated several changes to their trapping regulations that may benefit lynx but are not reflected in the

current proposal. Specifically, the Service would like feedback as to whether these regulations are easily understood and implemented by trappers and are effective in eliminating take of lynx. The Service also seeks input on whether there are different trapping methods that could be more effective in avoiding trapping of lynx.

MDIFW proposes conservation of 5,000 acres of lynx mitigation land. Further details are needed regarding the timing for completing the mitigation actions; location and quality of habitat; other uses that would be allowed on the lynx mitigation land; which management measures will be employed; how management will be secured; and how enforceable management requirements would be over the life of the incidental take permit. The Service seeks comments on the adequacy of mitigation offered and whether there are additional means to compensate for lynx take.

Incidental take projections were made assuming that lynx populations remain at early 2000s levels (at least 500 lynx). We seek input as to whether the population models in the draft ITP accurately portray future population trends and adequately assess the effects of incidental trapping. In addition, we seek input on the adequacy and accuracy of the models used in the draft ITP.

The draft ITP addresses uncertainty in changed circumstances but does not contain specific adaptive management strategies. Thus, we seek input on whether there are additional measures or monitoring that could be put in place to provide better

information on changes in trapper effort, changes in the range of lynx population, unanticipated lynx behavior, changing lynx habitat, and changing lynx populations.

Harm and harassment to lynx are forms of take identified in the draft ITP. We are particularly interested in whether there is information in addition to that provided in the draft ITP concerning the nature or injury and survival of incidentally trapped lynx or other furbearers. What percentage of trapped lynx are injured? How does trapping affect their survival? Are critical lynx behaviors affected by the trapping experience?

Compensatory mitigation in the draft ITP is proposed only for the five lynx mortalities; nonlethal take is not currently addressed. We are interested in suggestions for additional practicable measures to minimize and mitigate to the maximum extent practicable the full range of types of take. We also request input on other forms of mitigation that are offered in the ITP, including lynx research, management agreements with forest landowners, planning documents, and trapper education and outreach.

The most effective and useful comments are substantive. Substantive comments raise specific issues or concerns about the ITP and the draft EA, as well as supportive data or references. Comments merely providing support for or opposition to the ITP and EA will not be useful.

National Environmental Policy Act

In compliance with NEPA of 1969, we analyzed the impacts of implementing the draft ITP, issuance of the permit, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there would be any significant impacts or effects caused by issuing the incidental take permit. We have prepared a draft EA on this proposed action and have made it available for public inspection in person at MEFO (see ADDRESSES section).

NEPA requires that a range of reasonable alternatives to the proposed action be described. We developed the draft EA between November 2008 and May 2010. The draft EA analyzes five alternatives, each having a suite of conservation measures to minimize and mitigate take of lynx. We designed the alternatives based on discussions with Service experts and staff; scientific, trapping, and management experts; and MDIFW. We evaluated a no-action alternative (i.e., not issuing an incidental take permit), MDIFW's proposed ITP, two other alternatives comprised of multiple minimization and mitigation measures, and a fifth alternative in which upland trapping in northern Maine would be discontinued.

Although we attempted to fully develop alternatives, we believe there could be expertise among trappers and non-trappers that may provide other minimization and mitigation measures in addition to those in the draft ITP and the draft EA. We are seeking public input on the draft EA to determine whether there is additional information not in the draft ITP and draft EA that could better inform the decision making process.

In the draft EA, we attempted to quantify the incidental take of non-target wildlife (species other than lynx) in traps. We are particularly interested in whether there is information in addition to that provided in the draft EA concerning the prevalence of incidental take of non-target wildlife in traps. Which species are most frequently caught in Maine? What percent of these animals are injured or killed, and does incidental trapping have population-level affects?

At this time, there is no draft Implementing Agreement (IA) associated with the draft ITP. The purpose of an IA is to ensure proper implementation of each of the terms and conditions of the final ITP and to describe the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks. We may elect to develop an IA with MDIFW once any necessary changes to the draft ITP have been made.

Public Comments

The Service invites the public to comment on the draft ITP and draft EA during a 60-day public comment period (see DATES). All comments received, including names and addresses, will become part of the administrative record. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you may

request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Date: September 2, 2011

/s/ Wendi Weber

Wendi Weber, Acting Regional Director, Northeast Region

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